

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.7 OF 2018

1. Shri Madhukar Balkrishna Haldankar,
 Chatim, Major of age, residing at
 House No.B-135, Betim,
 Bardez, Goa.
 - (a) Madhumati Madhukar Chatim
 Haldankar (widow)
 - (b) Sudesh Madhukar Chatim Haldankar
 (Son)
 - (c) Sushant Madhukar Chatim Haldanker
 (Son)
 - (d) Sukanti Umesh Lotlikar
 (Married daughter)
 - (e) Supriya Rajesh Tandel
 (Married daughter)
 - (f) Amita Anant Kerkar
 (Married daughter) ... Appellants

V e r s u s

- ... Respondents
1. Ramesh Venkatesh Chatim Haldankar,
 of full age, Govt. Servant, residing
 at Badem, Salvador do Mundo,
 Bardez, (Since deceased)
 - a) Smt. Reshma Ramesh Chatim Haldankar
 widow of the Deceased Defendant no.1.
 - b) Smt. Radhabai Manguesh Lotlikar,
 (Expired)
 widow sister of the Defendant no.1
 Both r/o Badem, Salvador do Mundo,
 Bardez, Goa.
 2. Anandrao Venkatesh Chatim Haldankar,

of full age, Goldsmith,
residing at Badem, Salvador do Mundo,
Bardez, Goa, (since deceased)

3. Smt. Saraswati Lotlikar,
of full age, widow and housewife,
residing at Badem,
Salvador do Mundo, Bardez, Goa.
(Since deceased)

- a) Mangesh V. Lotlikar, Major of age,
b) Medha V. Lotlikar, major of age,

both residing at Badem, Salvador-do-Mundo
Bardez, Goa.

4. Sachit Arjun Kavlekar,
of full age, Contractor, residing at Maina,
Pilerne, Bardez, Goa. Respondents

Mr. J. P. Mulgaonkar and Ms. R. Banaulikar, Advocates for the
Appellants.

Mr. S. R. Rivankar and Mr. Rama Rivankar, Advocates for the
Respondent Nos.1(a), 3(a) and (b).

Mr. G. Nagvenkar, Advocate for the Respondent no.4.

Coram :- C. V. BHADANG, J.

Date :- 11th April 2019.

JUDGMENT

1. Heard.

2. The appeal is heard on the following substantial question
of law, by consent of parties :

(i) Whether the judgment of the First Appellate Court is vitiated on account of non consideration of the application under Order XLI Rule 27 of the Civil Procedure Code filed by the appellant ?

3. The suit filed by the appellant simpliciter for injunction was dismissed by the Trial Court which decree has been confirmed by the First Appellate Court. During the pendency of the appeal, the appellant filed an application under Order XLI Rule 27 of Civil Procedure Code for production of as many as 13 documents which includes the plaint and the written statement in Civil Suit No.69/1973 and 108/1976.

4. The case made out by the appellants is that the original plaintiff was made a party to the said suit filed by the original defendant no.1. Thus, according to the learned Counsel for the appellants, there is an admission of ownership of the appellant over the suit property. It is submitted by the learned Counsel for the appellant that although the application was heard along with the appeal, the impugned judgment of the First Appellate Court does not show any consideration whatsoever of the said application and on this ground, the judgment of the Appellate Court is vitiated.

5. The learned Counsel for the respondents, on the contrary, submitted that there are concurrent findings of fact recorded. It is pointed out that the claim of the appellant, which is based on the Inventory Proceedings has been negated by both the Courts below. It is also pointed out that the First Appellate Court also found that the appellants had failed to seek declaration in the face of specific denial of title by the respondents of the plaintiff.

6. On a careful consideration of the circumstances and the submissions made, I find that it would not be necessary at this stage to go into the merits, inasmuch as the judgment of the First Appellate Court does not show any consideration of the application filed by the appellant under Order XLI Rule 27 of the Civil Procedure Code.

7. It is undisputed that the application was heard along with the appeal and thus it was for the First Appellate Court to decide the said application one way or the other and then proceed to decide the appeal which is not done. Faced with this situation, the learned Counsel for the respondents submitted that this Court may pass an appropriate order as may be deemed just and necessary.

8. In my considered view, the matter will have to be remanded back to the First Appellate Court for deciding the appeal afresh along with the application under Order XLI Rule 27 of the C.P.C.

9. In the result, the following order is passed :

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned Judgment and Decree of the First Appellate Court is hereby set aside.
- (iii) RCA No.298/2010 is restored to the file of the learned Appellate Court for disposal according to law along with the application under Order XLI Rule 27 of C.P.C. filed by the appellants.
- (iv) Parties to appear before the First Appellate Court on 03.06.2019 at 10.00 a.m.
- (v) Rival contentions of the parties are left open.
- (vi) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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